

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

APPEAL SUIT No. 1260 of 1998

JUDGMENT :

This appeal is filed against judgment and decree dated 21.02.1998 in OS.No.49 of 1989 passed by the Senior Civil Judge, Bhongir.

For the sake of convenience, the parties are referred to as they are arrayed in the suit.

The brief facts of the case are as follows:

The suit OS.No.49 of 1989 is filed for partition and separate possession of a 2/3rd share of the plaintiffs out of the suit schedule 'A', 'B', 'C' and 'D' properties situated at Pallapahad Village of Thurkapally Mandal. The plaintiffs are real sisters and defendant No.1 is the father of the plaintiffs and they constitute a Hindu Joint family governed by Mitakshara school of law. The son of defendant No.1 died at the age of seven years. After his marriage with one Swaroopa- defendant No.1 lead a happy marriage life for three years and thereafter started ill-treating her. The plaintiffs and their mother filed a suit in the District Munsiff Court, Ramannapet for grant of maintenance while seeking for creating a charge on the movable and immovable properties of defendant No.1. They compromised the matter with defendant No.1 and he agreed to give Rs.40,000/- to the plaintiffs for their

maintenance and marriages and Rs.10,000/- and rice huller and grinding machine to the said Swaroopa towards her maintenance apart from giving half share to the plaintiffs out of the lands bearing Sy.Nos.5 and 6 of Pallapahad Village. Defendant No.1 got prepared compromise petitions one after the other and filed them into the District Munsiff Court at Ramannapet and when his wife Swaroopa came to know that the said terms of compromise are contrary to the actual settlement, she refused to accept the same at the time of recording. The District Munisiff, Ramnnapet passed an *ex-parte* decree on 17.08.1987 by creating charge over the Sy.Nos.5 and 8 for due maintenance of plaintiffs and their mother. Defendant No.1 filed AS.No.1 of 1988 challenging the said decree dated 17.08.1987, but it was dismissed.

The said schedule 'A', 'B', 'C' and 'D' properties are the ancestral and joint family properties of the plaintiffs and defendant No.1 and they are having coparcenery right and interest in the said land as per Section 29-A, the latest amendment of the Hindu Succession Act, 1956 (Andhra Pradesh Act, 13/86) as it came into existence from 05.08.1985 itself. As such, the plaintiffs are together having 2/3rd share and rights in the suit schedule 'A' 'B', 'C' and 'D' properties and defendant No.1 is having remaining 1/3rd right in the said properties. Plaintiffs came to know recently that defendant No.1 has fraudulently transferred some of the suit schedule 'A', 'B,' 'C' and 'D' properties to defendant Nos.2 to 6

in order to deprive the legitimate right of the plaintiffs in the suit schedule properties. Since the plaintiffs are having a right and interest over the suit properties, defendant No.1 has no right to transfer them in favour of anybody. The plaintiffs and their mother approached defendant No.1 on 03.04.1989 and demanded for partition and separate possession of the legitimate 2/3rd share of the plaintiffs out of the suit schedule A,B,C and D properties, but defendant No.1 refused to do so with an ulterior motive. Hence, the suit.

Defendant Nos.2, 3 and 5 to 7 filed their written statement stating that all the material averments are not true and the allegations are trumped up in the plaint. The claim of the plaintiffs that the plaint schedule 'A' and 'D' properties are ancestral and joint and that plaintiffs are entitled to 1/3rd share each under Sections 29-A of Hindu Succession Act, 1955 are amended by Andhra Pradesh State Act No.13 of 1986 are patently incorrect, misconceived and baseless. The claim of the plaintiffs that they are having coparcenary right and interest in the suit lands and that they have got equal right of share along with defendant No.1 over the plaint schedule mentioned properties, is misconception of laws and is baseless. It is denied that the transfer of properties made by defendant No.1 are not binding on the plaintiffs. The sale transaction as regards Ac.3.09 in favour of defendant Nos.2 and 3 house in favour of defendant No.4 and Ac.3.18 guntas in favour of defendant No.6 are in the knowledge of plaintiffs

and their mother. So the relief of cancellation of documents affected in favour of defendant Nos.2 to 7 is to be sought for. Defendant No.6 purchased the property under an agreement of sale dated 06.09.1987 namely the agricultural lands bearing Sy.Nos.5 and 8 admeasuring Ac.1.10 guntas, Ac.2.08 guntas respectively totally Ac.3.18 guntas, one half in the well and electric motor and shed as well as for a valid consideration of Rs.40,000/- and on the date of agreement an amount of Rs.5,000/- was paid to defendant No.1 towards advance and later on 11.12.1987 a further sum of Rs.12,000/- was paid to defendant No.1 by defendant No.6 which was acknowledged on the agreement itself. On payment of rest of the consideration of Rs.23,000/- in February, 1988, the defendant No.6 was inducted by defendant No.1 into possession of the lands covered by the said agreement. However, defendant No.1 having received the balance consideration did not give receipt therefore and as per the terms of agreement, he failed to execute and register a sale deed on one pretext or the other namely owing to the litigations between him and plaintiffs. The suit is misconceived and speculative false, misleading and vexatious statements are made in the suit which are deliberate. Therefore, it is prayed to dismiss the suit with compensatory costs.

Defendants Nos.2, 3 and 6 contested the suit but the remaining defendant Nos.1, 4, 5 and 7 were remained *ex parte*.

On the basis of the above pleadings of both the parties, the following issues were settled for trial.

(a) Whether the plaintiffs are entitled for partition of the plaint schedule properties in 3 equal parts? If so, whether they are entitled to 2/3rd share out of the same as prayed for?

(a) To what relief?

The plaintiffs examined PW.1 and marked Exs.A.1 to A.3. The contesting defendant Nos.2, 3 and 6 examined DWs.1 to 8 and marked EXs.B.1 to B.25. After the trial was over, a preliminary decree was passed against defendants with costs. Questioning the said preliminary decree, defendant No.6 in the suit filed this appeal. Defendant No.6 died and his legal representatives who are impleaded are pursuing the appeal.

This Court has heard Sri R.Prasad, learned counsel for the appellants and Sri S.Rahul Reddy, S.Lakshma Reddy and J.Kanakaiah, learned counsels for respondents. The counsel for the appellant argued that he had title and was in long settled possession of the property to the knowledge of the plaintiffs while the learned counsel for the respondents that the agreement of sale does not confer any title.

The finding against defendant No.6 is essentially found in para 18 of the lower Court judgment. He claimed a share in the property by virtue of Ex.B.18 document, which is an agreement of sale. The Court negated his claim. The appellant, therefore, filed this appeal. He essentially questions the finding of the learned Judge that the appellant had no title to the property. According to him, he has valid title to the property and also possession.

The short and simple point that therefore arises for consideration in this case is whether by virtue of Ex.B.18 agreement, the appellant has any right, title or interest in the property. Ex.B.18 admittedly is an agreement of sale. The defendant did not obtain a sale deed. In addition, he was examined as DW.1 in the suit. He agrees that he purchased the property under an ordinary document dated 06.09.1987. In his chief-examination itself he states that defendant No.1 is reluctant to execute a sale deed. Initially in his chief-examination, he states that he purchased the property for Rs.40,000/- and paid consideration of Rs.38,000/-. Later, he was recalled and Ex.B.18 agreement of sale was marked. He states that when the document was executed, Rs.12,000/- was paid and later another amount of Rs.18,000/- was paid through Ganta Srisailam, D.Pulla Reddy and another, but he does not have a receipt. In his cross-examination, he states that the possession of the land under Ex.B.18 was delivered to him after he paid Rs.5,000/-. A reading of his evidence

thus makes it clear that there are discrepancies about the sale consideration that he has paid. The fact however, remains that Ex.B.18 did not culminate into a sale deed. Learned counsel for the appellant argues that defendant No.6 who is main appellant was put in possession of the property pursuant to Ex.B.18. He states that minor discrepancies in the figure of sale consideration should not deprive of the appellant of his rights.

Both the learned counsels relied upon and argued on Section 6 of the Hindu Succession Act as it has been amended. Learned counsel for the appellant relied upon paras 15 and 16 of the judgment in **M.Sujatha v. M.Surender Reddy¹** and argues that Section 6 of the Central Act by which Hindu Succession Act was amended applies to the facts of the case and all daughters have a share of the property with effect from 09.09.2005 unless there is dispossession or alienation prior to 20.12.2004. The counsel also relies upon **R.Seethamma v. M.Thimma Reddy²** and argues that the agreement of sale coupled with the delivery of possession clearly leads to a dispossession of the property and that therefore, the property which is the subject matter of Ex.B.18 cannot be included in the items available for partition.

¹ 2016 (1) ALD 1

² 2017 (4) ALD 386

In reply thereto, learned counsel for the respondents also relies upon the same judgment of **R.Seethamma** (2 supra) and points out that the Division Bench of this Court went into the issue of Section 6 of the Hindu Succession Act and the meaning of the words 'dispossession' and 'alienation' which are appearing in the proviso to sub-section (1) Section 6 of the said Act. Learned counsel pointed out that dispossession means a transfer of the property in presenti and it is his contention that the Division Bench considered this aspect carefully and came to a conclusion that unless there is a transfer which is complete in all respects, the proviso would apply.

This Court after hearing both the learned counsels notices that in para 39 of the judgment of **R.Seethamma** (2 supra), this Division Bench split Section 6(1) into three parts and carefully analyzed the meaning of the word 'dispossession'. While considering the Will in that case, the Division Bench came to a conclusion that if the Will had come into effect by the dates stipulated in the Section, the dispossession is complete. If the executant of the Will died before 20.12.2004, and the will came into effect, the Division Bench held that there is dispossession i.e a testamentary dispossession. The Division Bench also noticed that a mere oral partition or an agreement of past partition was not considered to be a dispossession unless there is a deed of partition duly registered under law or a partition effected by a

decree of the Court. Therefore, the Division Bench came to a conclusion that the “dispossession” required is one that is completed in all respects. Once there is such dispossession, the property cannot be available for partition. The Division Bench judgment is a complete answer to the appellants case.

In the case on hand, admittedly, Ex.B.18 is not a document that is duly registered and it did not culminate in a registered sale deed as required under law for completing the transfer despite the passage of time. As per Section 54 of the Transfer of Property Act, it does not convey any interest in the property. Therefore, under Ex.B.18, there is no complete transfer, alienation or dispossession of the property. Hence, the appellant cannot claim any right in the property on the basis of an agreement of sale.

This Court agrees with the findings of the Court below on this issue. As this is the only point argued by both the learned counsels, this point alone is considered and the appeal filed by defendant No.6 is therefore, dismissed. No order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 26.10.2018
KLP